

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MELISSA RANSOM,

Plaintiff,

vs.

CIVIL NO. 01-822 RLP/LFG

ALBUQUERQUE POLICE DEPARTMENT,
APD OFFICER MIKE BERRY, individually and
in his official capacity; APD LIEUTENANT
MICHAEL CALLAWAY, individually and in his
official capacity, and APD SERGEANT KIM
KEARNEY, individually and in her official capacity,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Defendants' Motion for Attorney Fees, filed June 28, 2002 (**Docket No. 105**). For the reasons contained in this opinion, the motion will be **DENIED**.

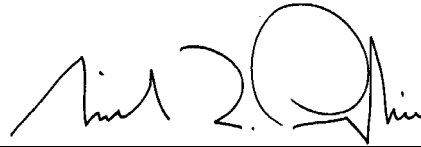
Plaintiff filed this case alleging federal civil rights violations and asserting various state claims. On June 18, 2002, the Court dismissed Defendants from this cause of action. Under 42 U.S.C. § 1988(b), the prevailing party in a civil rights case may be awarded reasonable attorney's fees as part of costs, but a successful defendant may only recover fees if the suit was frivolous, unreasonable or without foundation. *Hughes v. Rowe*, 449 U.S. 5, 14 (1980); *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421-22 (1978); *Crabtree v. Muchmore*, 904 F.2d 1475, 1477-79 (10th Cir. 1990).

The Court finds that Plaintiff's Complaint was not frivolous, unreasonable and

without foundation. Following the seizure of Plaintiff's property on March 20, 2001, Plaintiff's counsel made best efforts for the return of that property. Any errors made in the identification of those persons responsible for Plaintiff's property were made in good faith.

NOW, THEREFORE, IT IS ORDERED that Defendants' Motion for Attorney Fees is **DENIED**.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Richard L. Puglisi', is written above a horizontal line.

RICHARD L. PUGLISI
United States Magistrate Judge
Sitting by designation